

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST CORPORATION	DOCKET NO. WRU-02-39-272
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ORDER GRANTING WAIVER

(Issued October 16, 2002)

On October 3, 2002, Qwest Corporation (Qwest) filed with the Utilities Board (Board) a request for waiver of 199 IAC § 22.3(5), which requires telephone utilities to make interconnection of pay telephone equipment available to customers on the same basis as business service. The request has been identified as Docket No. WRU-02-39-272.

In support of its request, Qwest states that it is reducing its public access line (PAL) rates pursuant to Federal Communications Commission (FCC) decisions interpreting § 276 of the Telecommunications Act of 1996 (Act). Those decisions require Bell operating companies (BOCs), like Qwest, to recalculate their intrastate payphone line rates in compliance with the FCC's cost-based, forward-looking "new services" test.¹

¹ *Memorandum Opinion and Order, In the Matter of Wisconsin Public Service Commission Order Directing Filings*, FCC 02-25, CPD No. 00-01, Jan. 28, 2002. See also *Payphone Reconsideration Order*, 11 FCC Rcd at 20614, para. 146.

Subrule 199 IAC 22.3(5) requires all telephone utilities make provisions for the interconnection of pay telephone equipment available to customers on the same basis as business service. Qwest states that its revised rates, pursuant to the FCC's orders, represent a decrease from its current rates and is inconsistent with the Board's rules.

To grant the waiver, the Board must also find, based upon clear and convincing evidence, that the request meets the four criteria of 199 IAC 1.3. The four criteria are: 1) the application of the rule would cause undue hardship, 2) the waiver would not prejudice the substantial legal rights of any person, 3) the provisions of the rule are not specifically mandated by statute, and 4) substantially equal protection of health, safety, and welfare will be afforded by a means other than prescribed by the rule.

The Board finds that a waiver of 199 IAC 22.3(5) should be granted based on the Board's review of the information provided by Qwest in its pleading and the FCC's orders. The Board finds it would be an undue hardship for Qwest to meet the requirements of 199 IAC 22.3(5) since doing so would cause Qwest to be in noncompliance with the FCC's orders.

The Board also finds that the waiver will not affect the substantial legal rights of any person and that Iowa Code § 476.77 specifically allows for the waiver of the Board's rules. Additionally, the Board finds that substantially equal protection of the

public health, safety, and welfare will be afforded since the revised rate represents a decrease from the existing rate and will benefit Iowa ratepayers.

IT IS THEREFORE ORDERED:

The waiver request filed by Qwest Corporation on October 3, 2002, is granted. The application of 199 IAC 22.3(5) requiring telephone utilities to make interconnection of pay telephone equipment available to customers on the same basis as business service is waived under the circumstances discussed in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 16th day of October, 2002.